

**STATE OF NEW MEXICO
DEPARTMENT OF ENERGY, MINERALS AND NATURAL RESOURCES
OIL CONSERVATION COMMISSION**

**IN THE MATTER OF THE APPLICATION OF THE
NEW MEXICO OIL CONSERVATION DIVISION
TO CONSIDER PROPOSED RULES TO REGULATE THE
VENTING AND FLARING OF NATURAL GAS FROM
OIL AND NATURAL GAS PRODUCTION AND GATHERING FACILITIES**

**CASE NO. 21528
ORDER NO. R-21540-E**

**AMENDED ORDER ON NMOGA'S MOTION TO STRIKE
AND OTHER PROCEDURAL MATTERS**

The New Mexico Oil and Gas Association (NMOGA) timely filed a motion to strike Section 19.15.27.8.G(4) from the proposed Part 27 rule on venting and flaring of natural gas.

Written responses to the motion were timely filed by the New Mexico Oil Conservation Division (Division), several parties known collectively as "Climate Advocates," and the New Mexico State Land Office and Commissioner of Public Lands. Argument on the motion, including a reply by Movant to the other parties' responses, was heard on December 30, 2020.

NMOGA's motion to strike is denied for the reasons set out in the responses to the motion. NMOGA is invited to present factual evidence during the rulemaking hearing supporting its arguments that the section in question is not authorized by the New Mexico Oil and Gas Act nor reasonably related to the protection of correlative rights or the prevention of surface waste. Other parties are invited to present their own evidence on this section. The Commission will make its decision on the section in question as part of its deliberations following the hearing.

Counsel for all parties and the Hearing Officer also discussed a number of other logistical matters in connection with the hearing:

1. It was agreed that the order of presentation for both direct cases and rebuttal would be as follows: the Division, as the petitioner of the new rules and rule amendments; NMOGA, as representative of the regulated industry; the State Land Office; the Climate Advocates; and the Environmental Defense Fund (EDF). Notwithstanding this general order of presentation, the scheduling conflicts of individual witnesses will be accommodated to the extent practicable. This includes hearing from Ms. Begay on the morning of January 8, and from EDF's witness sometime before January 12.
2. It was agreed that the parties' experts need not and will not be expressly qualified as experts before offering technical testimony. The Commission will weigh the credibility and expertise of each witness offering opinion testimony as part of its deliberations.
3. No objection was lodged to the Hearing Officer's statement that the engineering staff who will be serving as "host" of the virtual event have been instructed to expel any person attempting to disrupt the proceedings, or to introduce vile language into the record, and that this expulsion will occur without the Hearing Officer issuing a warning. Folks who are expelled will be invited to offer their comments on the proposed rules in writing instead. The Hearing Officer shared with counsel a number to text in the event of an Internet disruption or other emergency. The "chat" function settings in Webex will limit chat to communication between an individual participant

and the host; these messages will not be viewable by any other person during the hearing, and are meant to address only audio-technical matters.

4. Counsel for Climate Advocates noted that the requirement to sign up to offer public comment by January 3 seems to be a new requirement that was not published. The Commission Chair, counsel, and Hearing Officer looked into the issue; any person who contacts Florene Davidson to request a time slot in which to offer verbal public comment will be scheduled in the time slot requested so long as they have not previously commented and that slot is not full, and regardless of whether the request is made by January 3. The Hearing Officer will make regular announcements about this opportunity, which will extend until January 15 regardless of the completion of the technical presentations. The language on the webpage indicating a January 3 cutoff date will be removed.
5. Technical presentations by the parties will begin at 1 p.m. on January 5, regardless of whether public comment has filled the entirety of January 4 and the morning of January 5, consistent with the Amended Pre-hearing Order. Technical parties and counsel are not required to attend the public comment sessions.
6. NMOGA stated its intention to file a motion concerning “logical outgrowth” and notice issues it sees with regard to certain language proposed for Commission adoption. The Hearing Officer will assure that other parties have an opportunity to respond to any such motion, and anticipates that it would be taken up as part of the Commission’s deliberations rather than in another motion hearing.

7. Slide presentations with text that is within the scope of the testimony and pre-filed exhibits may be shared on the platform screen during the hearing as demonstrative aids; written testimony or other documents that have not been previously filed are not welcome except as rebuttal. Rebuttal documents will be sent by email to all other counsel, the Hearing Officer, the Commissioners, and Commission staff at the appropriate time.
8. No final decision has been made on the nature of the post-hearing process. This decision will be made by the Commission at the end of the evidentiary record, and may include a short period of time for the parties to submit closing arguments and proposed findings or conclusions.

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FELICIA L. ORTH, HEARING OFFICER

Date: 12/31/20